

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature First Regular Session - 2011

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 117

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO STATE SOVEREIGNTY AND HEALTH AND SAFETY; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION 39-9003, IDAHO CODE, TO REVISE A STATEMENT OF PUBLIC POLICY, TO HEREBY DECLARE THAT THE PUBLIC POLICY OF THE STATE OF IDAHO IS THAT NO PERSON WITHIN THE STATE OF IDAHO SHALL BE COMPELLED TO PARTICIPATE IN CERTAIN HEALTH INSURANCE, THAT EVERY EMPLOYER IN THE STATE OF IDAHO SHALL BE FREE TO DECIDE WHETHER TO OFFER, MAINTAIN, CONTRIBUTE TO OR MODIFY CERTAIN HEALTH INSURANCE PLANS, THAT THE STATE OF IDAHO REAFFIRMS ITS SOVEREIGN POWER, AND THAT THE CONSTRUCTION OR EXPANSION OF CERTAIN HOSPITALS OR MEDICAL FACILITIES IS A MATTER RESERVED TO THE JURISDICTION OF THE STATE OF IDAHO; AMENDING CHAPTER 90, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-9005, IDAHO CODE, TO PROVIDE THAT CERTAIN PUBLIC LAWS SHALL NOT BE ENFORCED BY THE STATE OF IDAHO, TO PROVIDE THAT NO DEPARTMENT, AGENCY OR POLITICAL SUBDIVISION OF THE STATE OF IDAHO SHALL ESTABLISH ANY PROGRAM, PROMULGATE ANY RULE, POLICY, GUIDELINE OR PLAN OR CHANGE ANY PROGRAM, RULE, POLICY, OR GUIDELINE TO IMPLEMENT CERTAIN PUBLIC LAWS, TO PROVIDE THAT NO DEPARTMENT, AGENCY, POLITICAL SUBDIVISION, PUBLIC OFFICER OR EMPLOYEE OF THE STATE OF IDAHO SHALL ENTER INTO ANY AGREEMENT OR OBLIGATION TO IMPLEMENT CERTAIN PUBLIC LAWS, TO PROVIDE THAT NO DEPARTMENT, AGENCY, POLITICAL SUBDIVISION, PUBLIC OFFICER OR EMPLOYEE OF THE STATE OF IDAHO SHALL PROVIDE ASSISTANCE OR RESOURCES TO ANY AGENCY, PUBLIC OFFICIAL, EMPLOYEE OR AGENT OF THE FEDERAL GOVERNMENT RELATED TO ANY ATTEMPTED IMPLEMENTATION OR ENFORCEMENT OF CERTAIN PUBLIC LAWS, TO PROVIDE THAT NO DEPARTMENT, AGENCY OR POLITICAL SUBDIVISION OF THE STATE OF IDAHO SHALL ACCEPT OR EXPEND CERTAIN MONEYS, TO PROVIDE THAT NO ORDER OF JUDGMENT, WRIT OR LEVY OF EXECUTION SHALL ISSUE OR OTHERWISE BE ENFORCED UPON ANY PROPERTY OR AGAINST ANY PERSON IN THE STATE OF IDAHO TO COLLECT ANY AMOUNTS ADJUDGED DUE OR ASSESSED AGAINST THE STATE OF IDAHO OR ITS RESIDENTS FOR FAILURE TO COMPLY WITH CERTAIN PUBLIC LAWS AND TO PROVIDE THAT FOR INJUNCTIVE RELIEF AND THE AWARD OF ATTORNEY FEE'S AND COSTS; PROVIDING SEVERABILITY AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE INTENT. (1) Section 3, Article I, of the Constitution of the state of Idaho provides that "The state of Idaho is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land." The Constitution of the United States sets forth enumerated powers to the federal government created thereby, and reserves all other powers to the people and the states pursuant to the Ninth and Tenth Amendments to that Constitution.

(2) The Constitution of the United States, having delegated to Congress a power to "provide for ... general welfare of the United States," and separately a power "to regulate commerce ... among the several states," does

1 not extend to forcibly mandating, in any form, citizen participation in a
 2 national health plan, dictating the composition of insurance policies, em-
 3 ployer benefits or making determinations as to the type of medical facili-
 4 ties that may exist in each state.

5 (3) The states and people having reserved powers under the United States
 6 Constitution to themselves, it is incumbent upon the states, including
 7 Idaho, to ensure on behalf of their citizens, that the powers reserved to
 8 the people and states are not diminished through the assumption of nondele-
 9 gated powers by the federal government. To identify such encroachment and
 10 to peacefully and lawfully oppose and resist it is a natural duty that flows
 11 from the powers reserved, and is not in conflict with our recognition of the
 12 Constitution of the United States as the supreme law of the land.

13 (4) This Legislature has previously declared that "the power to require
 14 or regulate a person's choice in the mode of securing health care services,
 15 or to impose a penalty related thereto, is not found in the Constitution of
 16 the United States of America, and is therefore a power reserved to the people
 17 pursuant to the Ninth Amendment, and to the several states pursuant to the
 18 Tenth Amendment," Section 39-9003, Idaho Code. The Patient Protection and
 19 Affordable Care Act (PPACA), enacted by the federal government, is inconsis-
 20 tent with the declared policy of the State of Idaho and the powers reserved
 21 under the Ninth and Tenth Amendments, is an encroachment upon those reserved
 22 powers, and is an exercise of nondelegated authority. Such is the finding of
 23 this Legislature, which has been affirmed by the federal district court in
 24 the decision of State of Florida v. United States Department of Health and
 25 Human Services, Case No. 3:10-cv-91-RV/EMT (January 31, 2011, N.D.FL).

26 (5) The Court in State of Florida v. United States Department of Health
 27 and Human Services, having found the personal mandate in the PPACA unconsti-
 28 tutional and not severable from the whole, has affirmed that the entire law
 29 is unconstitutional. The Court having further affirmed that "the declara-
 30 tory judgment is the practical equivalent of specific relief such as an in-
 31 junction," the state of Idaho, being a named plaintiff, and having its legal
 32 standing through its declared policies under the Idaho Health Freedom Act
 33 specifically affirmed by the Court, is entitled to the full benefit of the
 34 Court's judgment, and entitled to exercise the state's reserved powers to
 35 enjoin the implementation of the PPACA.

36 (6) Implementation of an unconstitutional law is contrary to the Legis-
 37 lature's obligation to uphold the Constitution of the United States of Amer-
 38 ica, Section 3, Article I, of the Constitution of the state of Idaho. The
 39 Legislature of the state of Idaho, therefore, on behalf of the citizens of
 40 this state and to secure the blessings of liberty, hereby asserts its legit-
 41 imate authority to interpose between said citizens and the federal govern-
 42 ment, when it has exceeded its constitutional authority and declares that
 43 the state shall not participate in and considers void and of no effect the
 44 PPACA.

45 SECTION 2. That Section 39-9003, Idaho Code, be, and the same is hereby
 46 amended to read as follows:

47 39-9003. STATEMENT OF PUBLIC POLICY. (1) The power to require or regu-
 48 late a person's choice in the mode of securing health care services, require
 49 employers to provide health insurance coverage to their employees, deter-

mine the content of health insurance policies, or limit the construction or expansion of hospital or medical facilities or to impose a penalty related thereto, is not found in the Constitution of the United States of America, and is therefore a power reserved to the people pursuant to the Ninth Amendment, and to the several states pursuant to the Tenth Amendment. The state of Idaho hereby exercises its sovereign power to declare the public policy of the state of Idaho regarding the right of all persons residing in the state of Idaho in choosing the mode of securing health care services free from the imposition of penalties, or the threat thereof, by the federal government of the United States of America relating thereto.

(2) It is hereby declared that the public policy of the state of Idaho, consistent with our constitutionally recognized and inalienable rights of liberty, is that:

(a) Every person within the state of Idaho is and shall be free to choose or decline to choose any mode of securing health care services without penalty or threat of penalty by the federal government of the United States of America.

(b) No person within the state of Idaho shall be compelled to participate in a government health insurance program not authorized by the state of Idaho.

(c) Every employer in the state of Idaho shall be free to decide whether or not to offer, maintain, contribute to or modify health insurance plans for their employees and their dependents, without penalty or threat of penalty by the federal government of the United States of America.

(d) The state of Idaho reaffirms its sovereign power to provide regulatory oversight of insurance content, coverage, benefits and beneficiaries within the state of Idaho.

(e) The construction or expansion of a private or state authorized hospital or medical facility of any kind in the state of Idaho is a matter reserved to the jurisdiction of the state of Idaho.

(3) The policy stated herein shall not be applied to impair any right of contract related to the provision of health care services to any person or group.

SECTION 3. That Chapter 90, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-9005, Idaho Code, and to read as follows:

39-9005. INVALIDITY OF CERTAIN PUBLIC LAWS -- PROHIBITION ON ENFORCEMENT. (1) The Patient Protection and Affordable Care Act, P.L. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, P.L. 111-152, 124 Stat. 1029 (2010), herein collectively referred to as PPACA, having been declared unconstitutional by this Legislature, beyond the delegated powers of the federal government, and affirmed as such by the Court in *State of Florida v. United States Department of Health and Human Services*, Case No. 3:10-cv-91-RV/EMT (January 31, 2011, N.D.FL), shall not be enforced by the state of Idaho including, but not limited to, any of its departments, political subdivisions, courts, public officers or employees thereof.

1 (2) No department, agency or political subdivision of the state of
2 Idaho shall establish any program, promulgate any rule, policy, guideline or
3 plan or change any program, rule, policy or guideline to implement the PPACA.

4 (3) No department, agency or political subdivision, public officer or
5 employee of the state of Idaho shall enter into any agreement or any obliga-
6 tion to implement the PPACA.

7 (4) No department, agency, political subdivision, public officer or
8 employee of the state of Idaho shall provide assistance or resources of any
9 kind to any agency, public official, employee or agent of the federal govern-
10 ment related to any attempted implementation or enforcement of the PPACA.

11 (5) No department, agency or political subdivision of the state of
12 Idaho shall accept or expend moneys related to the implementation of the
13 PPACA.

14 (6) No order of judgment, writ or levy of execution shall issue or oth-
15 erwise be enforced upon any property or against any person in the state of
16 Idaho to collect any amounts adjudged due or assessed against the state of
17 Idaho or its residents for failure to comply with any provision of the PPACA.

18 (7) Any aggrieved person shall have a right to injunctive relief
19 against any person violating the provisions of this section, with an award of
20 attorney fees and costs to the prevailing party.

21 SECTION 4. SEVERABILITY. The provisions of this act are hereby declared
22 to be severable and if any provision of this act or the application of such
23 provision to any person or circumstance is declared invalid for any reason,
24 such declaration shall not affect the validity of the remaining portions of
25 this act.

26 SECTION 5. An emergency existing therefor, which emergency is hereby
27 declared to exist, this act shall be in full force and effect on and after its
28 passage and approval.